

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

MATTI KON, and the
BLITZ SYSTEMS, INC. 401(K) PLAN

Defendant.

Civil Action File

No. 1:14-CV-10085 (GBD)

CONSENT ORDER

OCT 23 2015
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WHEREAS, this action was filed by the Secretary of Labor (the "Secretary") pursuant to Title I of the Employee Retirement Income Security Act of 1971 ("ERISA" or the "Act"), 29 U.S.C. § 1001 et seq., and by the authority vested in the Secretary by ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5) alleging that Matti Kon ("Kon") and the Blitz Systems, Inc. 401(k) Plan (the "Plan") were in violation of ERISA §§ 402 and 403, 29 U.S.C. § §1102 and 1103; and

- I. The Plan was and is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and was established to provide benefits to employees of the plan sponsor Blitz Systems, Inc., who were covered by a plan subject to Title I of ERISA; and
- II. This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1); venue of this action lies in the Southern District of New York pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2); this Court has personal jurisdiction over the Plan for all purposes relevant to this matter including the entry of this Order pursuant to ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1); and at times relevant to this action, the Plan was an employee benefit plan within the meaning of ERISA § 3(3), and 29 U.S.C. § 1002(3); and

- III. The Secretary has duly made service on the Plan as required by the provisions of ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1); and
- IV. Defendant Kon agrees to serve and has served as the sole trustee of the Plan since it was established on or about October 10, 1997.
- V. As the sole trustee of the Plan Defendant Kon has the authority to do what is necessary and appropriate to administer and terminate the Plan.
- VI. The Plan and its trustee, Defendant Kon, have now agreed to take all steps necessary to administer and terminate the Plan, including but not limited to making any and all appropriate distributions to Plan participants; and
- VII. The Secretary and Defendants now present for approval and entry this Consent Order which outlines the steps Defendant Kon has agreed to take in order to cause the distribution of the assets of the Plan as well as the termination of the Plan.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:


- 1. By September 25, 2015, Defendant Kon will create a plan for the expedited and orderly winding down of the Plan. The plan will include provisions for *inter alia* (a) the equitable adjudication and payments of amounts due to participants in the Plan under ERISA and any other applicable Federal law; (b) distribution of funds due to any participants whose current whereabouts are unknown; and (c) compliance with obligations arising under ERISA and any other applicable federal laws.
- 2. Defendant Kon and/or his attorneys will submit the plan referred to in paragraph 1 above to the Employee Benefits Security Administration ("EBSA")¹ on or before September 25, 2015.

¹ U.S. Department of Labor Employee Benefits Security Administration, New York Regional Office, Attn: Deidre Alexander, Investigator, 33 Whitehall Street, 12th Floor New York, New York 10004.

3. Defendant Kon will distribute or cause the distribution of the assets of the Plan in accordance with applicable governing documents and Federal law.
4. Defendant Kon will make the distributions referred to in paragraph 3 above on or before October 30, 2015.
5. Defendant Kon will send a document(s) demonstrating that all appropriate distributions have been made to EBSA at the address referred to in paragraph 2 on or before October 30, 2015. Defendant Kon agrees that he will comply with any reasonable request by EBSA to supplement the documentation required under this paragraph.
6. Upon completing such distribution(s) referred to in paragraph 3 above, Defendant Kon will terminate the Plan in accordance with applicable plan documents, ERISA (29 U.S.C. § 1001 et seq.) and other applicable Federal law.
7. Defendant Kon will send documents demonstrating that the Plan has been terminated to EBSA on or before October 30, 2015.
8. Defendant Kon will also certify in a filing to this Court under oath on or before October 30, 2015 that all such distributions have been made.
9. Notwithstanding the foregoing, the October 30, 2015 deadline contained in paragraphs 4-5, 7, 9 may be extended by consent of the parties or by order of the Court.
10. This Court retains jurisdiction of this matter for the purposes of enforcing the terms of this Order until such time as Defendant Kon has filed a truthful certification as described in paragraph 8 above.
11. In the event that Defendant Kon does not comply with the terms of this Order, he consents to the appointment of an Independent Fiduciary, who will, at Defendant Kon's cost, administer and terminate the Plan.


12. Each party will bear its own costs in this matter.


13. Nothing in this Consent Order shall be binding on any other governmental agency.


Matti Kon
Date 09/25/15

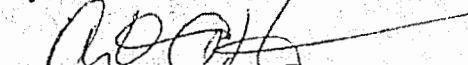
M. PATRICIA SMITH
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor


Blitz Systems, Inc. 401(k)
Plan
Date 09/25/15


BY: 
ALLISON L. BOWLES
Attorney (0571)
Date 10.20.15

By Matti Kon, Trustee


ARTHUR HIRSCHLER
Attorney for Defendants
Date

IT IS SO ORDERED:

OCT 23 2015


GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE